

Minutes of the
Board of Minerals and Environment
Telephone Conference Call Meeting
DENR Secretary's Large Conference Room
523 East Capitol Avenue
Pierre, South Dakota

11:00 a.m. CST
November 20, 2003

CALL TO ORDER AND ROLL CALL: Chairman Richard C. Sweetman called the meeting to order. The roll was called and a quorum declared.

BOARD MEMBERS PARTICIPATING: Richard Sweetman, Lee McCahren, Kathy Johnson, Wilbert Blumhardt, Chuck Monson, Mike DeMersseman, and Brian Radke.

BOARD MEMBERS ABSENT: Pat Healy and Linda Hilde.

OTHERS: Fred Steece, Bob Townsend, Eric Holm, and Brenda Binegar, DENR; Roxanne Giedd, Attorney General's Office; and John Begemann, Wharf Resources.

APPROVAL OF MINUTES FROM OCTOBER 16, 2003 MEETING: Motion by DeMersseman, seconded by Monson, to approve the minutes from the October 16, 2003, Board of Minerals and Environment meeting as mailed. A roll call vote was taken and the motion carried.

SURFACE MINING ISSUES: Eric Holm was administered the oath and testified regarding release of liability and surety, transfers of liability, and releases of liability (see attached matrix sheet).

Release of Liability and Surety: Motion by Radke, seconded by Monson, to release liability and \$500 surety for Dirksen Construction, Henry, SD, Mine License No. 83-14, one site in Clark County. A roll call vote was taken and the motion carried.

Transfer of Liability and Release of Surety: Motion by Blumhardt, seconded by Radke, to release \$5,000 for Thomas E. Leigland, Pringle, SD, Mine License No. 90-409 and transfer liability for one site in Custer County to Pacer Corporation, Custer, SD, Mine License No. 88-370. A roll call vote was taken and the motion carried.

Transfers of Liability: Motion by DeMersseman, seconded by Johnson, to transfer liability for one site in Edmunds County from Oban Construction Company, Ipswich, SD, Mine License No. 83-35 to Edmunds County Highway Department, Ipswich, SD, Mine License No. 83-161; transfer liability for one site in Codington County from Codington County Highway Department, Watertown, SD, Mine License No. 83-169 to Robert Schwandt, Watertown, SD, Mine License No. 00-711; and transfer liability for one site in Potter County from DOT-Pierre Region, Pierre,

SD, Mine License No. 83-10 to Edmunds County Highway Department, Ipswich, SD, Mine License No. 83-161. A roll call vote was taken and the motion carried.

Releases of Liability: Motion by Blumhardt, seconded by Radke, to release liability for John A. Carlson, Inc., Winner, SD, Mine License No. 83-1, one site in Sully County; release liability for H.F. Jacobs & Son Construction, Inc., Aberdeen, SD, Mine License No. 83-188, one site in Brown County; release liability for Thomas E. Leigland, Pringle, SD, Mine License No. 90-409, two sites in Custer County; release liability for Clarence McCune, DeSmet, SD, Mine License No. 93-477, one site in Kingsbury County and one site in Clark County; release liability for Schladweiler Construction, Mitchell, SD, Mine License No. 83-167, one site in Aurora County; release liability for Stava Gravel, Clear Lake, SD, Mine License No. 83-185, three sites in Deuel County; release liability for Jerauld County Highway Department, Wessington Springs, SD, Mine License No. 83-80, one site in Jerauld County; release liability for DOT-Aberdeen Region, Aberdeen, SD, Mine License No. 83-10, one site in Deuel County, one site in Grant County, and one site in Hand County; and release liability for DOT-Rapid City Region, Rapid City, SD, Mine License No. 83-10, one site in Butte County. A roll call vote was taken and the motion carried.

Surety Forfeitures: The surety forfeiture hearings for Herrick Services, Roslyn, SD, and Gene Steffes, Bristol, SD, were continued until the next board meeting.

Exchange of Surety and Acceptance of Reclamation Bond and Acceptance of Postclosure Bond: At its October 16, 2003, meeting the board accepted the department's recommendation to set Wharf Resources' reclamation bond at \$10,730,400 and the postclosure bond at \$8,115,055, both in the form of letters of credit. The board also adopted the Findings of Fact, Conclusions of Law and Order.

Regarding the reclamation bond, the department recommended acceptance of an amendment to Irrevocable Letter of Credit S 18572/191556, Scotia Bank, decreasing the amount of the letter of credit to \$10,730,400. The department also recommended that the following CD's be released: 0457013703, 0457013508, 30026303, 30040803, and 30037103. Two of these CDs are with Wells Fargo Bank, Lead and the other three are with First Western Bank, Spearfish.

Mr. DeMersseman noted that at the last meeting the board expressed concern that the letters of credit were not held in the United States.

Mr. Begeman stated that Wharf Resources' controller in Toronto confirmed that both letters of credit will be with the Bank of Nova Scotia through the New York Branch. Mr. Begeman noted that in the first paragraph of the letters of credit, it states that the bond is with the Bank of Nova Scotia, New York Agency, 1 Liberty Plaza, New York.

Motion by DeMersseman, seconded by Blumhardt, to accept an amendment to Irrevocable Letter of Credit S18572/191556, Scotia Bank, decreasing the amount of the letter of credit to \$10,730,400 (for Wharf's reclamation bond) and to release the following CD's: 0457013703, 0457013508, 30026303, 30040803, and 30037103. A roll call vote was taken among the board members who were present at the October 16, 2003, hearing, and the motion carried.

Board of Minerals and Environment
November 20, 2003, Meeting Minutes

For the postclosure bond, the department recommended acceptance of Irrevocable Letter of Credit S18572/199984, Scotia Bank, in the amount of \$7,511,196. Mr. Holm noted that DENR also holds CD No. 55096 in the amount of \$603,859 as part of the postclosure bond. The CD combined with the letter of credit total \$8,115,055.

Motion by Monson, seconded by Blumhardt, to accept Irrevocable Letter of Credit S18572/199984, Scotia Bank, in the amount of \$7,511,196 (Wharf's reclamation postclosure bond). A roll call vote was taken among the board members who were present at the October 16, 2003, hearing, and the motion carried.

OIL AND GAS HEARING NOS. 4-2003 AND 5-2003: Mr. McCahren stated that two petitions to intervene were filed regarding these two cases. A prehearing conference was held on November 18, 2003, and Mr. McCahren granted motions to consolidate the two cases into one case, continue the hearing until the January board meeting, and a discovery schedule was established. Mr. McCahren suggested that the board plan for a two-day meeting, January 14 and 15, 2004.

OIL AND GAS INITIATIVE: This matter was continued to the next board meeting.


OTHER BUSINESS: The next board meeting is scheduled for January 14-15, 2004, at the Matthew Training Center in Pierre.

The board congratulated Fred Steece on receiving the E. W. Marland Award.

Mr. Sweetman announced that Wilbert Blumhardt has provided public service for the state of South Dakota for 40 years.

ADJOURN: Chairman Sweetman declared the meeting adjourned.


Secretary Date

 1-14-04
Witness Date

South Dakota Board of Minerals & Environment

November 20 2003

License/Permit Holder	License/ Permit	Site No.	Surety Am .	Surety No.	Surety Company/Bank	DENR Recommendation
Release of Liability and Surety:						
Dirksen Construction Henry, SD	83-14		\$500	5236480	Dacotah Bank, Clark	Release liability and \$500.
		14004	NE1/4 Section 27; T113N-R57W, Clark			
Transfer of Liability and Release of Surety:						
Thomas E. Leigland Pringle, SD	90-409		\$5,000	110293	First State Bank of Newcastle, Newcastle, WY	Transfer liability and release \$5,000.
		409002	NW1/4 Section 19; T5S-R5E, Custer			
Transfer to:						
Pacer Corporation Custer, SD	88-370		\$20,000	12 03 35	Union Insurance Company	
Transfer of Liability:						
Oban Construction Company Ipswich, SD	83-35		\$500	11368	Ipswich State Bank, Ipswich	Transfer liability.
		35001	\$500	20815	First National Bank, Pierre	
			NE1/4 Section 9; T122N-R73W, Edmunds			
Transfer to:						
Edmunds County Highway Department Ipswich, SD	83-161		EXEMPT	NA	NA	

South Dakota Board of Minerals & Environment

November 20, 2003

License/Permit Holder	License/ Permit	Site No.	Surety Amt.	Surety No.	Surety Company/Bank	DENR Recommendation
-----------------------	--------------------	----------	-------------	------------	---------------------	---------------------

Transfers of Liability:

Codington County Highway Department Watertown, SD	83-169		EXEMPT	NA	NA	Transfer liability.
---------------------------------------------------------	--------	--	--------	----	----	---------------------

169014 NW1/4 Section 18; T117N-R53W, Codington

Transfer to:

Robert Schwandt Watertown, SD	00-711		\$4,000 \$500	11010004005 11010005113	F & M Bank, Watertown F & M Bank, Watertown	
----------------------------------	--------	--	------------------	----------------------------	------------------------------------------------	--

DOT - Pierre Region Pierre, SD	83-10		EXEMPT	NA	NA	Transfer liability.
-----------------------------------	-------	--	--------	----	----	---------------------

10057 W1/2 NW1/4 Section 3; T120N-R73W, Potter

Transfer to:

Edmunds County Highway Department Ipswich, SD	83-161		EXEMPT	NA	NA	
-----------------------------------------------------	--------	--	--------	----	----	--

Release of Liability:

John A. Carlson, Inc. Winner, SD	83-1		\$20,000	55-110414	United Fire & Casualty Company	Release liability.
-------------------------------------	------	--	----------	-----------	-----------------------------------	--------------------

1019 NE1/4 Section 33; T114N-R79W, Sully

South Dakota Board. . Minerals & Environment

November 20 , 2003

<u>License/Permit Holder</u>	<u>License/ Permit</u>	<u>Site No.</u>	<u>Surety Amt.</u>	<u>Surety No.</u>	<u>Surety Company/Bank</u>	<u>DENR Recommendation</u>
<u>Releases of Liability:</u>						
H.F. Jacobs & Son Construction Inc. Aberdeen, SD	83-188		\$20,000	964 93 46	Fidelity & Deposit Company of Maryland	Release liability.
		188013	SE1/4 Section 8; T122N-R64W, Brown			
Thomas E. Leigland Pringle, SD	90-409		\$5,000	110293	First State Bank of Newcastle, Newcastle, WY	Release liability.
		409001	SW1/4 Section 17; T5S-R5E, Custer			
		409003	NW1/4 SW1/4 & SW1/4 NW1/4 Section 23; T5S-R4E, Custer			
Clarence McCune DeSmet, SD	93-477		\$500	64474	First National Bank, Pierre	Release liability.
		477001	NW1/4 Section 21; T111N-R56W, Kingsbury			
		477006	NE1/4 Section 27; T113N-R57W, Clark			
Schladweiler Construction Mitchell, SD	83-167		\$2,500	3224	Live Stock State Bank, Mitchell	Release liability.
		167009	SW1/4 Section 1; T101N-R65W, Aurora			

South Dakota Board of Minerals & Environment

November 20, 2003

License/Permit Holder . License/ Permit	Site No.	Surety' Amt.	Surety No.	Surety Company/Bank	DENR Recommendation
--------------------------------------------	----------	--------------	------------	---------------------	---------------------

Releases of Liability:

Stava Gravel Clear Lake, SD	83-185	\$2,500	16980	Deuel County National Bank, Clear Lake	Release liability.
		\$500	26193	Deuel County National Bank, Clear Lake	

185002 E1/2 N1/2 Section 30; T115N-R48W, Deuel

185009 NW1/4 Section 26; T115N-R49W, Deuel

185012 NW1/4 Section 4; T115N-R49W, Deuel

Jerauld County Highway Department Wessington Springs, SD	83-80	EXEMPT	NA	NA	Release liability.
----------------------------------------------------------------	-------	--------	----	----	--------------------

80013 N1/2 Section 10; T108N-R63W, Jerauld

DOT - Aberdeen Region Aberdeen, SD	83-10	EXEMPT	NA	NA	Release liability.
---------------------------------------	-------	--------	----	----	--------------------

10303 NE1/4 NE1/4 Section 30; T115N-R48W, Deuel

10313 N1/2 NW1/4 Section 8; T119N-R49W, Grant

10314 SW1/4 Section 26; T111N-R69W, Hand

South Dakota Board of Minerals & Environment

November 20, 2003

License/Permit Holder	License/ Permit	Site No.	Surety Amt.	Surety No.	Surety Company/Bank	DENR Recommendation
-----------------------	--------------------	----------	-------------	------------	---------------------	---------------------

Release of Liability:

DOT - Rapid City Region Rapid City, SD	83-10		EXEMPT	NA	NA	Release liability.
		10318	Tr. A SE1/4 NW1/4 Section 12; T8N-R3E, Butte			

Surety Forfeitures:

Herrick Services Roslyn, SD	98-641		\$1,000	5202575	Dacotah Bank, Roslyn	Declare CD 5202575 forfeited and transfer proceeds to Mined Land Reclamation Fund.
		641001	NW1/4 Section 22; T124N-R55W, Day			
		641002	NE1/4 Section 1; T123N-R53W, Day			
Gene Steffes Bristol, SD	83-251		\$500	13107757	First Savings Bank, Bristol	Declare CD 13107757 forfeited and transfer proceeds to Mined Land Reclamation Fund.
		251005	SE1/4 Section 27; T118N-R54W, Codington			

South Dakota Board of Minerals & Environment

November 20, 2003

License/Permit Holder	License/ Permit	Site No.	Surety Amt.	<u>Surety No.</u>	<u>Surety Company/Bank</u>	<u>DENR Recommendation</u>
Exchange of Surety and Acceptance of Reclamation Bond:						
Wharf Resources (USA), Inc. Lead, SD	356, 434, 435 & 464		\$12,000,000	Irrevocable Letter of Credit 518572/191556	Scotia Bank, Toronto, Ontario, Canada	Accept amendment to Irrevocable Letter of Credit 518572/191556, Scotia Bank, decreasing the amount of the letter of credit to \$10,730,400. Release CD's 0457013703, 0457013508, 30026303, 30040803, and 30037103.
			\$11,400	0457013703	Wells Fargo Bank, Lead	
			\$68,700	0457013508	Wells Fargo Bank, Lead	
			\$125,300	30026303	First Western Bank, Spearfish	
			\$180,000	30040803	First Western Bank, Spearfish	
			\$25,950	30037103	First Western Bank, Spearfish	
Acceptance of Post Closure Bond:						
Wharf Resources (USA), Inc. Lead, SD	356, 434, 435 & 464		\$7,511,196	Irrevocable Letter of Credit S18572/199984	Scotia Bank, Toronto, Ontario, Canada	Accept Irrevocable Letter of Credit 518572/199984, Scotia Bank, in the amount of \$7,511,196.
			\$603,859	55096	First National Bank/Miners & Merchants Branch, Lead	DENR already holds this CD.